

## **MINUTES OF HARRISONBURG PLANNING COMMISSION**

**May 13, 2009**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, May 13, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, Alan Finks, Bill Jones, and J.M. Snell.

Members absent: None

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with all seven members in attendance. He then asked for review and approval of the minutes from the April 8, 2009 Planning Commission meeting.

Mr. Chenault moved to approve the minutes from the April 8, 2009 meeting.

Mr. Finks seconded the motion.

All voted in favor of approving the minutes. (7-0)

Chairman Burden asked for review and approval of the minutes from the Comprehensive Plan joint meeting with City Council on April 15, 2009.

Mr. Chenault moved to approve the minutes from April 15, 2009.

Mr. Jones seconded the motion.

All voted in favor of approving the minutes. (7-0)

### **Special Recognition**

At this time Planning Commission recognized former members George Pace and David Wiens for their service to the Planning Commission. Chairman Burden presented each with a certificate and a gift.

### **New Business**

#### ***Special Use Permit – Iglesia Nueva Vida Pentecostes (2009 Renewal)***

Chairman Burden read the first item of business and asked for staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City.

The following land uses are located on and adjacent to the property:

Site: Undeveloped land, zoned M-1

North: Waterman Self Storage, zoned M-1

East: Single-family homes and undeveloped land, zoned R-1

South: Hajoca Corporation, zoned M-1

West: Across Waterman Drive, Frazier Quarry, zoned M-1

This proposal has appeared before Planning Commission on two previous occasions and on each occurrence it was recommended for approval. In December 2002, Iglesia Nueva Vida Pentecostes requested a special use permit to allow a religious use within the M-1, General Industrial District in order to construct a church at 760 Waterman Drive. Both staff and Planning Commission recommended approval of the request with a condition that adequate exterior lighting is provided to illuminate any parking areas, walkways and entrances to provide security for church patrons. The special use was approved by City Council in January 2003.

The Zoning Ordinance stipulates that, once approved by City Council, the authorized special use shall be established, or any permitted construction shall be commenced and diligently pursued within twelve months from the approval date or within such time as specified by the City Council. Because the applicant did not diligently pursue the construction of the church within twelve months and City Council had not provided any extended time frame, the authorized special use expired.

In early 2007 Iglesia Nueva Vida Pentecostes came back to the City requesting the identical special use permit at the same location. Again, staff and Planning Commission recommended approval with the lighting condition, and City Council granted the special use permit in May 2007. During this process staff pointed out to the applicant that once a special use permit is approved the applicant would have twelve months to begin steps towards construction.

On April 15, 2008, almost a year after approval, a preliminary site plan for the church was submitted to the Fire Department for their review. Fire Department review comments were then returned to the applicant's engineer on April 17, 2008. No further submissions regarding site development were forwarded to the City until February 3, 2009, when the comprehensive site plan was submitted for review. Because of the considerable gap in time from Council approval to the comprehensive site plan submission, the special use permit expired because the applicant failed to diligently pursue their plan of development. Staff informed Iglesia Nueva Vida Pentecostes that the comprehensive site plan review would move forward; however, they would need to renew the special use permit.

Iglesia Nueva Vida Pentecostes is requesting a special use permit per Section 10-3-97 (9) of the Zoning Ordinance to allow a religious use within the M-1, General Industrial District. The property is located at 760 Waterman Drive, which is just south of the intersection with Chicago Avenue and Waterman Drive. If approved, the applicant desires to construct a 17,450 square foot church on the property. The new building would contain a sanctuary, classrooms, offices, and a kitchen area. The church would not provide housing facilities.

The Comprehensive Plan designates Waterman Drive as Commercial and the vicinity contains both commercial and industrial uses. Because this northern section of Waterman Drive has predominately industrial uses with limited nighttime activities, staff feels that outdoor lighting should be provided to illuminate any parking areas, walkways and entrances in order to provide security for church patrons. Approval is recommended for the special use permit with the condition that exterior lighting is provided for security purposes at any parking, walkway and entrance area.

Currently, the comprehensive site plan for this project is under review by the City; approval for this plan will be withheld until a renewed special use is in place. Through discussions with Public

Works regarding traffic, it was determined that because the peak hour volume of traffic occurs on Sunday and is only 101 vehicles per hour (VPH), which is just over the 100 VPH threshold, the applicant would not be required to submit a Traffic Impact Analysis (TIA). However, the City is requesting that right-of-way be dedicated for the future construction of sidewalk; this will be handled as part of the comprehensive site plan approval process.

Staff would like to point out that Section 10-3-130 (c) of the Zoning Ordinance specifies that an authorized special use must be established or construction diligently pursued within twelve months of approval or it expires. However, on March 27, 2009, House Bill 2077 was signed by the Governor, which extends the period of validity for certain preliminary and recorded plats and final site plans, as well as certain other land use approvals, which includes special use permits, to July 1, 2014. The language of HB 2077 dealing with the extension of special use permits is as follows:

*Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit outstanding as of January 1, 2009, and related to new residential or commercial development, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, shall be extended until July 1, 2014, or longer as agreed to by the locality. The provisions of this subsection shall not apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit, or other agreement or zoning action be terminated or ended by a certain date or within a set number of years.* Therefore, if approved, Iglesia Nueva Vida Pentecostes would have until July 1, 2014 to commence construction of the authorized special use.

Staff does not have any concerns with a religious use in this area. Although zoned M-1, the industrial uses found along this section of Waterman Drive are not intensive enough that a church could not operate at this location. Staff supports this application with the exterior lighting condition.

Chairman Burden asked why the new state law does not take this issue into account; the previous special use permit granted for this project may fall into the extension category.

Mrs. Banks replied the 2007 special use permit expired before the House Bill went into effect on January 1, 2009.

Chairman Burden opened the public hearing and asked if the applicant or the applicant's representative would like to speak.

Pastor Abel Castro said they had no further comments.

Chairman Burden asked if there was anyone who would like to speak in favor of the application. Hearing none, he asked if there was anyone who wished to speak in opposition of the application. Hearing none, he closed the public hearing and asked Planning Commission for comments and discussion.

Mr. Chenault moved to approve the special use permit.

Mr. Jones seconded the motion.

Chairman Burden asked if there was any discussion on the motion. Hearing none he asked for a voice vote on the motion.

All voted in favor of the motion.

Chairman Burden said the motion to approve the special use permit passed (7-0) and will moved forward to City Council on June 9, 2009.

***Alley Closing – Between Dogwood and Willow and Adjacent to 36-R-3, 7, & 11 (Harshberger)***

Chairman Burden read the request and asked for staff to review.

Mrs. Banks said this is a request to close a 2,245 +/- square foot portion of an undeveloped alley located between South Willow Street and South Dogwood Drive. If approved the applicant would enlarge her yard and make use of a portion of the alley to install a secondary entrance onto her property at 195 South Willow Street.

The applicant has been working with the City and adjoining property owners for the past two years with the intent of making the alley usable by all surrounding landowners; however, her attempts have been unsuccessful. At this time the applicant desires to purchase the alley and install some type of fence or natural barrier along the northern property boundary.

The section of the alley requested to be vacated is approximately 15 feet wide by 149.7 feet long. A public sanitary sewer line is located within the limits of the alley; therefore, an easement would need to be established prior to the sale. There is an outlet pipe at the eastern end of the alley, which discharges into the area requested to be closed; staff has determined that this is a private stormwater pipe and it would be the responsibility of any future owners to maintain.

Closing the eastern portion of the right-of-way should not impact property owners at either end. There is a natural drainage way that runs perpendicular to, and across the alley, within the portion requested to be closed. This drainage way ditch is open in the alleyway, making it difficult for vehicular traffic to cross. Also, there is a utility structure in the western portion of the right-of-way, closer to Dogwood Drive, blocking access into the alley.

The alley is not utilized by City Departments for trash collection or emergency services and the City has no plans to develop the right-of-way. Staff supports the request and recommends closing this portion of the alley.

Mr. Da'Mes said the utility building which sits in the alley, what purpose does it serve?

Mrs. Banks said it is a private building owned by an adjacent property owner.

Mr. Da'Mes asked if it would need to be removed.

Mrs. Banks replied no, it was not located within that portion of the alley requested to be closed. There was a structure within the section of the alleyway, which is requested to be closed; however it has already been removed.

Mr. Chenault asked if the adjoining property owners would have the immediate opportunity to purchase their adjacent portion if the alley is closed.

Mrs. Banks said yes, that is correct.

Mr. Chenault asked if the applicant is interested in purchasing the entire alley if the adjoining property owners are not interested.

Mrs. Banks replied yes.

Chairman Burden said this is not technically a public hearing; however, it is our practice to allow the interested parties to come forward and speak. Would the applicant like to speak at this time?

Ms. Harshberger of 195 South Willow Street, responded that Ms. Banks said it adequately and there is a letter in your packet that explains her request. She had no further comments.

Chairman Burden asked if there was anyone else wishing to speak in regard to the alley closing.

Ms. Jenise Crouch, 3165 Hemlock Street, said she was speaking on behalf of her parents who are the adjacent property owners to the north. They just want to let it be known that if the alley is closed they are interested in purchasing the portion adjacent to them.

Chairman Burden asked if there was anyone else wishing to speak regarding the alley closing. Hearing none, he asked Planning Commission for comments.

Mr. Jones made a motion to approve the closing of the alley.

Mr. Snell seconded the motion.

Mr. Da'Mes said he would like to be educated on the process of selling the alley. How is the value determined and then how is it offered for sale.

Mrs. Banks said the real estate division for the City places a value on the square footage of the alley based on surrounding properties within that block.

Mr. Da'Mes said do the neighbors then have a certain amount of time to make an offer to purchase.

Mr. Fletcher replied no. What happens after tonight is it will move forward to City Council and Council will make the determination as to whether or not it should be sold. At that point it is between the applicant and the adjoining property owners that are interested in purchasing a portion to decide who is going to get what portions of the alley. They will have to work with a surveyor to determine where the points will be placed. Once they pay for the alley, at the price determined by real estate, it will come before City Council for the second hearing (reading) and if approved the City Attorney deeds it to the new owners. There is no time frame after the first hearing before City Council.

Chairman Burden said there is a motion, which has been seconded, is there any further discussion. Hearing none, he asked for a voice vote on the motion to approve closing the alley.

All voted in favor of the motion (7-0) to close the alley.

Chairman Burden said this will move forward to City Council on June 9, 2009.

### ***Ordinance Amendment – Home Occupation Definition Modification***

Chairman Burden read the request and asked staff for comments.

Mr. Fletcher said after discussions during the April regular Planning Commission meeting of Dr. Harriet Clare Cobb's proposal for an ordinance amendment to add "home business" as a new use permitted by special use permit, a public hearing has been arranged to approach this matter from a different perspective. Planning Commission suggested the City's existing definition for "home occupation" should be amended to specifically allow professional counselors the privilege of operating from residential zoning districts. This change would allow Dr. Cobb's proposed clinical private practice as a by-right use with an approved "home occupation" permit. This proposed amendment would also include language that would clearly allow residents who provide music lessons from their homes to operate under the "home occupation" permit.

The following text was the language proposed by the Commission to be added to the “home occupation” definition: *The forgoing notwithstanding, giving music lessons, and providing professional counseling services by appointment only and for not more than ten clients per week, shall constitute a home occupation.*

During the review of this suggested amendment, staff had several questions arise about what the added statement would actually mean. After deliberating, staff has proposed the following language, which we believe more clearly represents the intention of the added statement. The entire definition is provided for reference (staff’s proposed language change is shown in italics): Home Occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors’ offices for the treatment of patients. *The forgoing notwithstanding, providing professional counseling services by appointment only for not more than ten clients per week, and giving music lessons shall constitute home occupations.*

As shown in the proposed changes above, professional counselors would be allowed no more than ten clients per week, by appointment only, and people providing music lessons would be permitted to have an unlimited number of clients. It should be clearly understood that both of these uses would be interpreted differently from any others allowed as a “home occupation” because these two particular uses would be allowed to receive clients to their homes while all other uses would not have that privilege.

While discussing this proposed amendment, Planning Commission should keep in mind some of the comments that staff made last month and other issues that could surface if this amendment is approved. Some of these issues could be:

- the difficulty in enforcing this type of mechanism,
- the potential frustration of neighbors not having the capability to express their concerns or comments for the traffic and clientele that could be traveling into their neighborhoods,
- the impact of these uses on apartment or townhouse communities that have limited parking availability,
- the precedent that this could set by establishing the desire of more residents wanting their “home occupation” to allow traffic to and from their home, and
- Planning Commission should also consider what uses should be allowed under the meaning of “professional counseling.”

Much of this information we discussed last month; but I wanted to review it again. If you have any questions I will try to answer them for you.

Mr. Chenault said he had been thinking about this since the last meeting and after reading staff’s comments it has solidified my thinking on this. I can live with this ordinance the way we have it proposed, but I think we can do better. If we are going to have a good home occupation ordinance, there should be a set of very clear guidelines that have to be met. If the guidelines are met, then staff would issue a home occupation permit. Many of the guidelines that are needed are in the

current ordinance; but I think we could go further with those. For example, some of the traffic issues could be addressed by only allowing one client per home occupation at any time. We could also regulate the hours, or limit the hours within the home occupation permit itself. I would like to remove the specific occupations that are allowed under the ordinance, because I feel we should have an ordinance that is universally applicable. If I want to do accounting in my home, I could come to Community Development to review the guidelines and make my application. Staff could review the application with me and if I meet all the requirements, then staff could issue the permit. If the requirements for the home occupation are not met and the permit is not issued, the aggrieved applicant can then apply for a special use permit or appeal to the Planning Commission. I just think that it is really important that we give staff every little bit of criteria they can to grant a home occupation permit and not have to make any arbitrary and capricious types of judgments for granting these permits. It would stand up better if it was ever challenged, and it is fairer to citizens.

Mr. Finks said those are some good points. One thing I can see is in both the case of the music teacher and the counselor, you may run into a situation where they might actually have more than one client there at a time; therefore, the limit on the number of persons may not work.

Mr. Chenault said you cannot have everything and if that is what it takes to come up with a good solid ordinance, then so be it. I just think it is not a good idea to designate specific occupations which you can and cannot have in an ordinance. Ten years from now that ordinance may grow to 47 pages, if we have to keep amending it.

Chairman Burden asked if home occupation was a term that is used in the R-1 zoning classification.

Mr. Fletcher said home occupation is defined within the definition portion of the zoning ordinance and then is listed as a permitted use in all of the residential classifications.

Chairman Burden asked if there was any further discussion. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak in favor of the ordinance amendment.

Harriet Cobb, 950 Turkey Run Road, said I see what Mr. Chenault is saying about not having a list of occupations that are okay, and a list of occupations that are not okay; instead having general criteria that the occupation must meet. I would wonder if staff could just eliminate the wording in the ordinance that excludes beauty parlors, barber shops, doctor's offices and eliminate language that specifies music lessons and professional counseling. Instead you could just add criteria that would maintain the character of a residential neighborhood. The question is how do we craft something that allows for the many different, small types of occupations that could be done in the home, while not opening up for a Sheetz gas station; all the while, not putting a burden on staff to have to micro-manage these permits.

Chairman Burden asked Dr. Cobb if she was opposed to the language presented tonight.

Dr. Cobb replied the language was fine in terms of what she wanted to do. In terms of the point Mr. Chenault made, it is just a temporary fix.

Mr. Chenault responded that is exactly my point. It is fine for Dr. Cobb and what she wants to do is absolutely acceptable to me. What I worry about is that there are so many different type home occupations possible that are not going to fall into this set of criteria. This will cause problems. In regard to enforcement; there would be no way to enforce this ordinance. The best way to enforce this would be to tie it down in the beginning at the permitting process so that we have some type of control from the start. Unless we get a complaint from a neighbor, I do not know how you would

ever enforce an ordinance like this. To me it is more of a permitting process than an enforcement process.

Dr. Cobb said she agrees with Mr. Chenault. A home occupation is more of a general contract within a residential neighborhood. If you think of occupations that do occur like accounting, legal consultation, interior design, or even the Mary Kay sales, I do not feel those would be problematic to a neighborhood.

Chairman Burden asked if there was anyone else who would like to speak regarding this ordinance amendment.

Mr. Nick Melas of 276 Cantrell Avenue said he agrees with Mr. Chenault. I just think that limiting the language is a good idea; because if you try to limit every single thing that could be included in home occupations, you might be writing forever.

Chairman Burden asked if there was anyone else who would like to speak regarding this ordinance amendment. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Baugh said what I suggested last month with this amendment had several things behind it. One was a sense that we were just stuck; I do not know that what we had before us at the time was going anywhere, but we can take that up again before the evening is over. Just speaking for myself, a comment has been made that if we go with something like this it only allows for relatively few things; I happen to think that is a good thing. That is exactly what I intended with this. We allow relatively few things right now and I feel we ought to allow relatively few things. The music situation is one we have been allowing and we just have not written it down anywhere; it makes sense to do that now. All I was trying to do was acknowledge that I am willing to consider letting Dr. Cobb do what she wants to do, only something that intensive and probably nothing more. I am not prepared to support anything more than that right now. In theory, we could have ten, fifteen, maybe more, people come back over the next year and ask to be included; however, what we have had in reality is two in many, many years. Obviously, if down the road, we start to deal with four or five more occupations who feel they need to be included; then yes, that tells us this may not be the way to go. But we do not know this; in fact the track record is we do not have people coming in, wanting to be added to home occupations. I certainly do not agree with knocking out the sentences that limit or add uses. I want to keep this about as circumspect as we can make it. We can do with this language however we want. We do have another approach before us, the special use permit, which is more along the lines of what Mr. Chenault may be talking about. Trying to craft something very general did not seem to satisfy all the bases last time.

I personally think, whatever we decide on, if you feel we cannot enforce it, then you need to vote no. If you think it cannot be interpreted fairly, you ought to vote no. That is what staff has been telling us all along. We have something now that does not allow these things and as long as we do not allow them, we do not have to worry about interpretation or enforcement. If we are going down this path of expanding this, then we are going to create some interpretation and enforcement issues. If we do not think we can make sense of those changes, then we just ought to leave what we have alone.

Mr. Da'Mes said I feel Mr. Chenault's point comes from a fairness issue. The same bothered me. We seem to appease the situation; because it was a good situation, but it does not take care of



everything. I am not in favor of removing the language of limiting or adding the uses, just because it does give us some clarity.

Mr. Chenault said I respectfully disagree with the idea that if you do not think it can be enforced; do not vote for it. I think it is more than an enforcement issue, it is a permitting process. Frankly, from a legal standpoint, this is about one step away from special legislation. What that means is that rather than dealing with things on a general equal footing you are dealing with specific individuals and granting them preferential treatment. I am willing to support this amendment and I will; I just think we can do a better job. The fact that we do not know what is coming in the future. As our economy changes we may see an increase in home occupations and we are going to have to deal with that.

Mr. Baugh said it is already a permitting process; we are talking about who qualifies for that permit.

Mr. Chenault agreed.

Mr. Snell asked staff what the definition of professional counseling was.

Mr. Fletcher replied that is a very good question. We talked about it at length and we could not really come up with a good place to draw the line. Anybody can argue that they are a professional counselor. There are different approaches that we could take, like requiring a certification or degree. But we could not come up with a clearly defined definition.

Mrs. Turner said we do not know how many people are called counselors and who certifies people who are called counselors.

Mr. Chenault said that gets back to what I am saying. By creating criteria for a permit, you concern yourself with the impact of the use and not necessarily the person. I do not think we need to put ourselves in the position of making those types of substantive judgments.

Mr. Finks asked what is a legal counselor, or a financial counselor. Are they professional, they both may have degrees or be certified.

Mr. Snell said I think that amending the definition as Mr. Baugh suggested is the immediate action that we should take. This language, while not perfect, is adequate to hold us until we can work out a program that is more similar to staff's suggestion last month. I rather like the idea of using the special use permit program because it gives Planning Commission and Council the opportunity to evaluate the questions like professional counselors. I also think that a special use permit keeps it open, because as we move into the future we may find more telecommuters; people that would be working from home with customers traveling to them. I do not think that this amendment fixes a problem; but I do think that it is an adequate patch.

Chairman Burden said I do not feel this language is arbitrary and capricious. I feel if we, as a body, have a sense to recommend to Council, that this, like the music teachers, was something which deserves to get the fast track to be called a home occupation, we should. We have thought through what is being sent forth, it is not arbitrary and capricious.

Mr. Baugh said obviously we can do this a different way, but it is going to take a whole lot more time and a whole lot more writing by staff. The point about what professional counseling services means, without having to write a definition, is well taken. Until such time as you do write a definition, it is an issue. Without attempting to solve that problem entirely, do we think it would help to say licensed professional counseling?

Mr. Snell said he did not bring that up because he had a problem with that language. Licensed professional counseling, I believe there is intent with that, but it is still very broad.

Mr. Finks said we could sit here and hash over and over this point. At some point we need to move this forward and see what City Council's feeling on this may be.

Dr. Cobb added if you want to add the term "license" to the language, you may want to say licensed mental health professional, so that it would be inclusive of social workers and psychologists.

Mr. Finks made a motion to approve the amendment as it was written.

Mr. Snell seconded the motion.

Chairman Burden said there is a motion and a second, is there any further discussion. Hearing none, he asked for a roll call vote.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da Mes – yes.

Commissioner Snell – yes.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said the motion passes (7-0) and will move forward to City Council on June 9<sup>th</sup>.

### **Unfinished Business**

#### ***Ordinance Amendment – Home Business Definition & Special Use Addition***

#### ***Special Use Permit – 950 Turkey Run Road – Home Business (10-3-34 (9))***

Chairman Burden read the requests and said in light of the motion on the preceding ordinance amendment does the applicant desire to move forward with the next two items or to table.

Dr. Harriett Cobb said she would like to table the two requests until the outcome of the City Council public hearing on the ordinance amendment.

Chairman Burden said these items are then tabled and we will move forward to the public input section of our agenda.

### **Public Input**

Kelly Straughen said he is here to hopefully get some information on the Comprehensive Plan. I was wondering if you have an agenda prepared, or a list of steps you are taking. In particular, I want to know when you are going to review the Erickson Avenue/Stone Spring Road Corridor.

Chairman Burden responded that there was a joint meeting between Planning Commission and City Council last month. At this meeting we discussed how exactly we would proceed with this issue. There is, of course, lots of interest in it and I think it is fair to sum up that we, Planning Commission, would commence the process of reviewing the plan first. There is a consensus that the plan we have now is a solid plan. Therefore, as to any specific portion of the plan and when we would review that portion, we do not have any set time frame. You are catching us here tonight at

the beginning of the process. Of course, one of the major parts of the review will be the public input, but we are just not there yet.

Mr. Fletcher added that staff has actually already started on the update. Staff met with all the different departments to discuss the different roles each different department will need to take care of. This department review is what we call the “status check” of the Comprehensive Plan. Each different chapter is being evaluated for the actual raw data and specifics, updating of demographic information, and so forth. We have already set a deadline of July 2<sup>nd</sup> for departmental completion of their portion of the “status check” so that planning staff can begin the task of more comprehensively rewriting those sections. Hopefully, by the beginning of the fall, that up-to-date draft would be in a format for Planning Commission to decide how and when they would like to conduct public input sessions.

Mr. Straughen asked if this review would be for the entire Erickson Avenue/Stone Spring Road corridor.

Mr. Fletcher replied this “status check” and review would be for the entire Comprehensive Plan. What you are looking for in particular has yet to be discussed. Planning Commission would need to review the updated information and then determine how and when they would like to proceed with public input. But right now, we are in the staff’s status check mode, where we are updating the actual language before Planning Commission will hold any public hearings.

Mr. Straughen said in the newspaper it states that City Council just applied for a 16 million dollar bond to take care of Erickson Avenue to the train trestle. Does this not include everything?

Mr. Chenault said part of the 16 million was for that; it is not the entire amount.

Mr. Straughen said are you going to look at this whole corridor or are you going to do it in sections.

Mr. Baugh said that has not been determined yet. The sense is that we are working on phase one now; when we get to phase four is anyone’s guess. We do not know when the whole corridor is going to get built. My thinking is that from a planning standpoint, since we know that eventually that road is going to get built, we probably will review it as the completed road. By the same token we may need to look at it very closely to see if we can determine what the timing is on road completion. This is all material that we are going to be looking for public input on and things that we will be discussing more in the future.

Mr. Fletcher asked Mr. Straughen if what you are looking for is your opportunity to comment on those issues.

Mr. Straughen replied yes.

Mr. Fletcher said that time has not been set yet. It will be publicized in the newspaper, and you can actively contact our office to find out when it would be. There will be time for you to comment, it just will not be for several more months.

Mr. Straughen said I do not mind a couple of months; but I do mind if it turns into several years. Surely you know that VDOT has already purchased all the necessary land and from a landowners standpoint all that needs to be done is to tear up and start building the road. I understand that you need to have the funding; but when I read that 16 million is approved...

Mr. Baugh said that is only a part of the 16 million. There are eight different items that those funds must go to. It is not just Erickson Avenue; it is a series of capital projects where we are going to be issuing bonds that in total, come to 16 million.

Mr. Straughen said as long as it is looked at. Mr. Fletcher mentioned July earlier, that is not too long.

Mr. Fletcher responded that July is the date that departments must have updated information back to Planning Staff. I would not guess that it would be until October before we are soliciting for public comment.

Mrs. Turner said there is a web site that information will be posted as to the status of the Comprehensive Plan update. It is a link on the Community Development page. There is not a lot on there right now because we are in the beginning stages; but as we start updating chapters and setting meeting dates it will be posted. If you think something is of interest, then you are welcome to contact us and ask questions.

Chairman Burden asked if there was any further public input. Hearing none, he asked for a report of secretary and committees.

#### **Report of secretary and committees**

Mrs. Banks said the zoning inspectors visited the Industrial and Technology Park area of the City. There were actually zero violations to report. Next month you can look for the inspectors in the south end of the City at exit 243.

Mr. Baugh said the ordinance amendment changes regarding boarding houses went through fairly innocuously. The special use permit for Blue Ridge Drive passed unanimously, 4-0. The preliminary plat for Kettlekamp is coming back to Planning Commission. What Council was looking at last night from Mr. Kettlekamp was significantly different from what was brought to this Commission. The applicant has made some significant changes and we agreed to send it back to Planning Commission.

#### **Other Matters**

##### ***Poultry Enforcement Discussion***

Chairman Burden said we have a significant matter under the “other matters” portion of our agenda. It concerns the issue of backyard chickens and enforcement; I will ask staff to review.

Mr. Fletcher said on the April 28, 2009 City Council agenda, a group of citizens known as the Harrisonburg Backyard Chicken Project (HBCP) presented information on the issue of raising “laying hens” within residential areas of the city. These citizens are petitioning the City to create an ordinance that would allow this practice. After listening to the presentation and engaging in conversation with HBCP, City Council directed the Harrisonburg Planning Commission to review this issue. A few days after the City Council meeting, Planning staff met with the Animal Control Officer to talk about the different ways to approach this issue, and if necessary, how to enforce it. Staff also researched how other localities regulate backyard chickens. Attached to this memo you will find several documents; a table that outlines how other localities enforce this practice, the document that was presented to City Council by the HBCP, a letter written by a veterinarian from the USDA, the current Animal Control sections of the City Code, and an article that appeared in the winter issue of *Edible Blue Ridge* about a family in Charlottesville that raises chickens. The

following paragraphs explain how the City has enforced this issue in the past and how the current subject began.

Regulation of the keeping of poultry and other common agricultural animals is not a new issue for the City. For a number of years the Community Development Planning and Zoning Division has been notifying property owners of this type of violation of the City Code by stating that the Zoning Ordinance does not permit agricultural uses. For the most part, the animals are usually poultry, and it has been handled in this manner because staff has interpreted the keeping of poultry as an agricultural use, which is not permitted in any zoning classification. Typically, violations of this type are brought to our attention by citizen complaints, and also recently through the pro-active zoning inspections process. When a citizen is notified of their violation, they have 30 days from the receipt of the letter to bring the property into compliance. Failure to bring the property into compliance results in the City taking legal action, which could result in a misdemeanor charge and a fine of up to \$1,000.00.

The Community Development Department, however, is not the only city department that deals with this issue. The Police Department's Animal Control Officer has also been actively involved in this enforcement by responding to citizen complaints and informing residents they must discontinue the keeping of their poultry or they will be notified by the Planning and Zoning Division of their violation. The Animal Control Officer physically removes and detains chickens and roosters, when they are running at large, without involving the Planning and Zoning office. The Rockingham-Harrisonburg SPCA accepts the animals that the officer has in her possession; however, the SPCA is required to take only cats and dogs but not chickens. If the SPCA begins to accept more poultry, the cooperation between the City and the SPCA may change, which could result in more costs to the City. Generally, people do not claim their chickens because the daily fee from the SPCA is more costly than the replacement value of their chickens.

It should be known that chickens are not the only birds that people have been told they could not raise; other birds include pheasants, swans, ducks, and pigeons. The Animal Control Officer has also witnessed the keeping of doves, however no one had complained about the birds and they were confined and seemed to be properly cared for. Although not birds, the Planning and Zoning office has even told people they could not keep bees within the city limits, again because it was interpreted as an agricultural use.

Our current issue regarding the keeping of "laying hens" began near the end of 2008 when a citizen was notified of their violation of raising chickens in their back yard. After rectifying their violation, they began discussions with the City to find out how an amendment could be proposed to allow the keeping of "laying hens" with appropriate regulatory controls. Planning and Zoning staff met with a small group of individuals in February to discuss the process of amending the Zoning Ordinance. During this discussion, staff realized that an amendment to the Zoning Ordinance may not be the most appropriate location of the City Code to enforce this issue. Staff believed a more appropriate location would be the Animal Control section of the City Code because the Animal Control Officer had more enforcement capabilities and hands on practice of detaining the animals. As the meeting came to a close, staff recommended they work with the City Attorney to potentially amend the City Code where appropriate. Eventually, the citizens brought their concerns to City Council, who then referred the issue to Planning Commission to determine whether it should be addressed as a land use issue or an animal control issue.

During a recent meeting between Community Development and the Animal Control Officer, several things were discussed, but the general consensus was that if the City decided to allow “laying hens,” the Animal Control Officer had more appropriate resources to manage the subject matter. The following is a short list of the different issues that we discussed:

- If this is regulated through the Zoning Ordinance, the City must decide if it will be a use permitted by-right or by special use permit. If a special use permit is required, individuals who wish to raise chickens will be required to pay \$325.00 and go through a public hearing process at Planning Commission and City Council. One major question to consider would be what the criteria should be for whether someone should receive a special use permit. Perhaps after meeting some basic dimensional regulations, would the decision be based solely on whether or not their neighbors came out to oppose? Would this be equitable?
- If permitted there should be regulatory controls such as:
  - Should it only be permitted within certain zoning classifications and/or on lots of certain minimum sizes?
  - Could homeowner’s or property owner’s associations or a group of townhouses/apartments collectively be able to raise chickens on common land?
  - Should there be setback regulations, and/or shelter accommodation regulations? (It is important to understand that the Code of Virginia contains specifics on the conditions under which “domestic” or “companion” animals should be kept, which are enforced by the Animal Control Officer, but it does not specify the same for poultry, which is defined in the state code as “agricultural,” therefore the City would have to establish guidelines if they are needed.)
- If it is regulated by the Zoning Ordinance, then the Animal Control Officer would still need to be involved because Planning and Zoning staff do not have the equipment or knowledge to capture roaming chickens, or to determine whether they are being kept in humane and sanitary conditions or even if their smell was excessive.
- If it is placed in the Zoning Ordinance, and then it is later decided to be removed, all properties that were raising chickens would be considered non-conforming and would be able to continue as long as the property owner did not discontinue the practice for 24 consecutive months. If enforcement of raising chickens is placed within the Animal Control section of the City Code, there is no state mandated non-conforming use protection clause.
- There are people who keep chickens for eating as opposed to raising chickens for their eggs. Currently, no regulation prohibits the slaughtering of them in the city, and in actuality, there is no regulation on slaughtering any domestic animal apart from the Code of Virginia, which requires it to be done humanely. Staff believes a regulation that attempts to regulate the slaughtering of animals would be unenforceable regardless of what part of the code regulates it. There is no way to tell if hens are being kept for their eggs or to be eaten.

City Council has requested Planning Commission decide whether the regulation of backyard chickens falls within the scope of land use regulations or belongs elsewhere in the City Code, if desired. Regardless of what section of the City Code would regulate this, there can be further conditions set regarding issues mentioned previously. After deciding what section of the City Code should regulate chickens, public hearings would be needed on specific ordinance language to decide if the keeping of chickens is an appropriate practice to allow in the city. If it is ultimately

determined to not permit it, then city staff could continue enforcing the City Code as we have been or a different procedure can be put in place.

Mr. Fletcher continued, that is all I have to present, if you have any questions for me, or Jetta Earhart, the Animal Control Officer for the City, is also here to answer any questions.

Mr. Finks said if covenants of a subdivision do not allow chickens, what happens then.

Mr. Baugh replied then it would not be allowed in the subdivision. The covenants trump the ordinance.

Mrs. Turner said the City, however, does not enforce covenants. Regardless of which ordinance it is handled in, there can be a lot of parameters that it operates under; as many or as few. It does not give any more, or any less, control under any one ordinance.

Mr. Fletcher added that if this were to go in the zoning ordinance, we would obviously have to hold a public hearing. If it goes in the animal control regulations, it is not required to have a public hearing, although City Council could hold their own public hearing if they wish.

Mrs. Turner said I believe Council insinuated that they would hold a public hearing on the matter.

Chairman Burden asked for a bit more detail on the Roanoke City regulations.

Mr. Fletcher explained what it says is that chickens are permitted in areas other than just agricultural; you can have up to ten birds, if you have a lot that is less than 20,000 square feet.

Mrs. Turner further explained that the language reads you can only have ten birds on any piece of property which contains less than 20,000 square feet of area. There is an area in this ordinance that is a gap. If you are less than 20,000 square feet you can have ten birds; however, no person shall maintain more than 40 birds on any property in the city except in an area zoned for agricultural use or a farm of five acres or larger in size. There is a gap as to what happens between 20,000 square feet and five acres; how many birds can you keep.

Chairman Burden asked if there were any further questions for staff at this time. Hearing none, he stated Planning Commission's charge is relatively limited. We have not been asked to consider the merits of keeping backyard chickens versus the reasons to oppose that idea. Our question is that if the keeping of backyard chickens is an issue that is addressed, should it be addressed as a zoning matter or an animal control matter.

Mrs. Turner added that if Planning Commission decides it is a zoning matter, City Council would want you to enter in to further discussion about it; they were giving you the authority to continue on to draft regulations.

Chairman Burden said I do not think we have been asked to conduct this as a public hearing; of course I would take input on that idea from other commission members. That is not to say that we may not eventually go to a public hearing; but my idea is that we should not start out thinking that is what is going to happen tonight. Does anyone on the Planning Commission have a conflicting view with that point?

Mr. Chenault replied I agree with the Chairman, this has not been advertised as a public hearing. My sense is that there are a lot of people in the community that want to be heard on this and we certainly are not prepared to move forward on any substantive issues tonight.

Chairman Burden agreed and asked that commission move forward with the discussion that they have been tasked with.

Mr. Snell said in staff's description of the discussion topic it mentioned that for a number of years zoning has been notifying property owners that they were in violation of City Code by stating that the zoning ordinance does not permit agricultural uses. Where do you derive the authority to say that?

Mr. Fletcher replied that the way our zoning ordinance is written, it specifically states what uses you are permitted to do, not the other way around. If it is not listed, it is not permitted; therefore you are in violation of code.

Mr. Snell said we can establish then, that for years we have considered agricultural uses in the City to be a zoning issue. Does staff think it is an animal control issue or a zoning issue?

Mr. Fletcher said we do not think that it is a zoning issue. We think that it is more of an animal control issue, because they have the equipment, knowledge, and the means necessary to physically do something about it. As I stated in the report, if it is handled by zoning, we have a notification process that we must go through. They get a violation notification, they have thirty days to rectify the violation, or we can go to court. If it is handled in animal control, the animal control officer can go out and verify if there is a violation. If there is, they can remove chickens if necessary, or inform the owner of the proper way to rectify the violation.

Mr. Snell said the point I am getting at is that those are enforcement activities; therefore animal control is a necessity in enforcing the zoning ordinance violation. If we can establish that the reason there is a problem is because our zoning ordinance does not allow agricultural uses, then the issue is both; a zoning issue and animal control issue. City Council has now had a request from a group of citizens to consider the keeping of laying hens as a permitted use in the City. They have even proposed some of the rules that they think should be attributed to it. I think this is a land use issue.

Mr. Fletcher said there is a fine line. For instance we do not control dogs or cats, that is a land use issue too, is it not? You can keep dogs and cats; but we do not regulate or enforce the land use of keeping them.

Mrs. Turner said although we have said in the past that you cannot keep chickens because we consider them to be an agricultural use and agricultural uses are not permitted by our current zoning ordinance, should it be decided to regulate them through animal control, and we set up some type of parameters such as one per so many square feet of lot area, that does not mean that we would have to do anything corresponding to the zoning ordinance. We would stop interpreting that chickens were an agricultural use. If the animal control ordinance were amended to allow chickens, under whatever conditions were deemed to be appropriate, then, as soon as that was done we would no longer be writing people and telling them they were in violation of the zoning ordinance; because somewhere else in the City Code it now specifically allows people to keep chickens. Just because we have been telling people that they were not allowed because they were an agricultural use does not mean that you have to change it in zoning to now make it effective.

Mr. Chenault asked what about allowing it in the Central Business District; or apartment complexes where there are no yards. Is that not a land use issue; could it be written within the animal control ordinance that laying hens could not be permitted in the Central Business District.



Mrs. Turner replied we would need to ask the City Attorney that question specifically. Right now, there is not an ordinance that you cannot have dogs or cats in those areas; I do not know that this is a whole lot different, but we would need to ask the City Attorney.

Mr. Baugh stated he had spoken with the City Attorney about that. His sense is, if you put this in animal control, you do not really want to specifically refer to zoning classifications. What you could do is put in setback requirements, or limit it to single family dwellings, or specific lot sizes. To me the real problem with considering it a zoning issue gets into that state law of non-conforming uses. If we were to try this (allowing chickens) and six months into it we discover that it was a terrible idea and want to remove it, then if it is clearly crafted as an animal control ordinance, Council can fix the mistake and what people could do today, they cannot do tomorrow. If you put it in the zoning ordinance, people could do tomorrow what they did yesterday, and they could continue doing so. They can keep new people from coming in and doing it, but you will get stuck with that group of non-conforming uses that are allowed to continue.

Mr. Chenault said because of that last statement, I think it is appropriate to treat it as an animal control issue at this point. The selling point of that is the non-conformancy. In animal control you still have the ability to keep it out of apartments or townhouse complexes, or even away from other poultry facilities.

Mr. Snell said I challenge that. We issue special use permits all the time that are completely revocable.

Mr. Chenault replied he was concerned with the special use process for this, just like with the home business.

Mr. Baugh said if we have an authorized special use permit operating right now, we can change the ordinance to remove that particular special use, but anybody who received that special use permit can keep it and continue to operate it.

Mr. Chenault said you might have some disease issues that are no fault of the people raising the chickens, but you are stuck and cannot remove them from the non-conformancy. With an animal control approach to it, I do not feel you would be struck.

Mr. Finks said currently within the animal control regulations you see language that pertains to lot sizes. That would be something we could consider if we did it under animal control.

Mr. Baugh said whoever writes a draft is probably going to look at that.

Mr. Fletcher asked Mr. Snell if what he was referring to, regarding the special use permit was that when someone applies for a special use permit, conditions can be set on the applicant that would say the special use permit is only for this property owner.

Mr. Snell said yes, it is something we do all the time. To me this is a zoning issue; the letters that have been sent out in the past derive their authority from the zoning ordinance and not animal control. That is where it was until this group came forward and said will you consider this as a possibility.

Mr. Chenault said if there is a fear that everybody in Harrisonburg is going to be allowed to have laying hens should you move this forward solely under animal control, that is just not the case. There are numerous options available to make common sense differentiations of what properties would be eligible for hens and what properties would not be. You have the ability to make those dimensional prohibitions within the animal control regulations.

Mrs. Turner said perhaps we could ask the animal control officer if she has anything to add to the discussion at this point.

Jetta Earhart, animal control officer, said she feels as if it is a combination of the two. I feel as if I would need a lot of guidance from zoning in some regards; therefore it would be a combination that takes a good bit of effort between both departments.

Chairman Burden asked if City Council adopted an approach under animal control that said no laying hens on parcels of less than one acre. If there is a violation, how would the zoning office be involved in helping to resolve this.

Ms. Earhart replied I would need to confer with them to determine what the lot size was.

Mrs. Turner said it would probably be more in the permitting end of it, and/or the violation portion. We would need to provide answers regarding lot size; unless, everyone comes in with a current survey of their property to show that they have the required area.

Ms. Earhart said it is a whole new realm for me.

Chairman Burden asked if there were any further questions for Ms. Earhart.

Mr. Snell asked how many chickens are out there in the City right now.

Ms. Earhart replied I have no idea. I have taken as many as 30 from one location; they were all running at large. That task involved multiple people from the police department setting traps for them over a one week time frame. In another area, I have taken out 17 birds. I have had two chicken complaints this week, one person had six, the other had eight, and both of those were not for laying purposes. Generally, what I see are people who get the hens with the intent of butchering them. I have not dealt with laying hens at all, what I have gone out on are running at large issues or noise issues. Animal code does cover these issues; because it is a noise violation or a running at large violation. Our running at large code covers all animals. Up until 2003, the City had the same code that you see quoted by many of the other localities. When we rewrote the code in 2003, we said this is really covered by zoning, let's change it, clean up the language and say what our goal was; if you own an animal you must keep it contained. Many times when I go out on a complaint, I simply tell the owners that you are in an area that is not zoned for this and they will comply.

Mr. Fletcher said zoning has actually only sent four letters this year regarding chickens. I do not know if they were all for laying hens or what.

Mr. Snell asked how many letters were sent last year, at least one a month.

Mr. Fletcher replied no, the average for the year might be seven or eight, not a lot. Ms. Earhart gets a lot more than we ever hear about.

Mrs. Turner said we work with Jetta now and then on this. If she tells someone to get rid of them and then discovers they did not relocate the birds, she will call and say here is an issue.

Chairman Burden said it sounds like there is a good working relationship currently between the two departments.

Ms. Earhart replied there is a real good working relationship.

Chairman Burden thanked Ms. Earhart and said it sounds like what Planning Commission should be discussing now is towards some consensus of what we would vote on. Do we have a consensus, or do we need to discuss the topic further.

Mr. Baugh said in many ways, the key issue for me, if this does happen, is the idea of having the escape hatch by being part of animal control should we decide it is not in the City's best interest.

Mr. Chenault said there is not a thing we cannot do under the animal control ordinance that we cannot do under land use. We can place dimensional regulations, setbacks, number of chickens, all within the animal control ordinance.

Mr. Baugh said we have a blanket prohibition right now, it is just not allowed anywhere in the City. I feel City Council is looking at it as, if you are going to do this it has got to be something very limited. Within zoning categories is not the way this ordinance needs to be headed.

Mr. Jones said if it is going to be very limited, then it is going to require enforcement. If it is going to require enforcement, then in my opinion, it is an animal control issue in so much as you can have immediate attention when a complaint comes in. As opposed to weekends and holidays when zoning staff is not here working. Also, there is the thirty day time period with zoning; with animal control you can get immediate results. That is my opinion, if you are going to allow this; I do not know that I am in favor of this at all.

Mr. Chenault said he comes down on the side of animal control also.

Chairman Burden asked if there was a motion at this time.

Mr. Jones moved to recommend animal control as the appropriate vehicle in which to address the issue of backyard chickens.

Mr. Chenault seconded the motion.

Mr. Finks asked if this would be subject to a public hearing at some point.

Mr. Baugh replied we are getting ahead of ourselves there. City Council has just asked the question of where it is appropriate. We have answered that question. My educated guess is that Council will decide who is prepared to draft some type ordinance for this; it could come back to this group, it could be done through the City Manager's office, or staff. Assuming some sort of ordinance is drafted, I do not believe that technically, City Council would have to hold a public hearing on it; but I cannot imagine that they would not.

Chairman Burden asked for a roll call vote on the motion.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da Mes – yes.

Commissioner Snell – no.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said the motion passes (6-1) and this will return to City Council with a recommendation that if backyard chickens are permitted they would be enforced under the animal control ordinance.

**Adjournment**

The meeting was adjourned at 9:15 p.m.

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Chairman Jared Burden

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Secretary, Alison Banks